IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8833 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TEXTILE LABOUR UNION

Versus

PRABHA TEXTILE MILLS CO LTD

Appearance:

MR NIGAM R SHUKLA for Petitioner

Ms VAIBHAVI D NANAVATI for

M/s NANAVATI & NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/02/2001

ORAL JUDGEMENT

This is a petition filed by the Textile Labour Union, Viramgam for challenging the judgment and award dated 30.8.1988 passed by the Industrial Court, Ahmedabad in Reference (IC) No. 742 of 1976 under the Bombay Industrial Relations Act, 1946.

2. The facts leading to filing of this petition, briefly stated, are as under :-

2.1 The petitioner is a trade union registered under the Trade Unions Act and is a representative union under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as `the BIR Act') for the workers employed in the cotton textile industries situated at and around Viramgam and is also a representative union for all the workmen employees in the textile mill which was previously called Prabha Textile Mills Company Ltd. and thereafter being called Viramgam Textile Mills, Viramgam, (a unit of National Textile Corporation Gujarat Ltd.).

2.2 Prabha Mills Ltd. was closed in the year 1968. With effect from 14.11.1972, the management of the Prabha Mills Ltd. was taken over by the National Textile Corporation Ltd., New Delhi under the Sick Textile Undertaking (Taking Over of Management) Ordinance, 1972. The actual production in the mill, however, could not be restarted immediately, but for the purposes of maintenance the unit was functioning with the help of the management of National Textiles Corporation Ltd., New Delhi till 31.3.1974. During this period, the work of cleaning the machineries and other maintenance work was being done with the help of a few workmen and all the 2200 employees who were working in the mill prior to its closure in 1968 were not employed till 31.3.1974. With effect from 1.4.1974, the undertaking came to be nationalized under the Sick Textile Undertakings (Nationalization) Act, 1974 (hereinafter referred to as `the Nationalization Act' or `the Act' for brevity).

2.3 After 1.4.1974 a number of workmen came to be employed. The demand of the union on behalf of those workmen was that they were entitled to be treated as in continuous employment of the respondent mill with effect from the date when they had originally joined the Prabha Mills Ltd. and that the closure from 1968 onwards did not take away their right to be treated as in continuous employment of the respondent mill, notwithstanding the fact that with effect from 1.4.1974, the undertaking came to be nationalized under the aforesaid Act. According to the union, even by virtue of the provisions of the Nationalization Act and particularly section 14 thereof, the workmen who had originally joined the Prabha Mills Ltd. and who could not render their services for no fault of theirs, were entitled for all proposes, to be continued in service with effect from the date when they had originally joined Prabha Mills Ltd.

2.4 In view of the failure of the conciliation proceedings, reference was made to the Industrial Court in the year 1976. The statement of claim was filed by the union on the aforesaid lines.

2.5 In its written statement filed on behalf of the Viramgam Textile Mills, Viramgam, a unit of National Textile Corporation Gujarat Ltd. (hereinafter referred to as `the respondent' or `the nationalized mill'), it was contended that in view of the provisions of the Nationalization Act, if the workmen or employees had any claim for any period upto 31.3.1974, they could proceed against the old management, but with effect from 1.4.1974 the undertaking having been nationalized under the aforesaid statute of Parliament, in view of the provisions of the said statute, the respondent was not liable in respect of any claim of any workman or employee for the period prior to 1.4.1974. It was submitted that the respondent had employed many workmen after 1.4.1974 but they cannot claim to tack their present services with their past services, if any, with the Prabha Mills Ltd. It was further stated in the written statement that the workmen had already secured the benefits for the services with the previous mill prior to 1.4.1974 in view of the order dated 22.2.1979 of the Assistant Commissioner of Payments, Government of India in the matter of claims filed under Section 20 of the Nationalization Act.

2.6 At the hearing of the reference, the union led oral evidence of four workmen. According to them, they had joined services of Prabha Mills Ltd. prior to 1968, but the mill remained closed for a long time and the workmen were not required to render services although they were ready and willing to offer their services. They were thereafter taken up in employment after 1.4.1974. The witnesses admitted that those who were on the muster roll of the mill on 1.4.1974 were granted the benefit of continuity in service. After hearing the arguments of the learned advocates for the parties, the Industrial Court by its impugned judgment and award dated 30.8.1988 rejected the reference after holding that the workmen who were not on the muster roll of the mill as on 1.4.1974 were not entitled to be treated in continuous service merely on the basis of the services rendered by them in the past till the date of closure in 1968.

3. Inspite of several opportunities given to the learned counsel for the petitioner, as recorded in the orders dated 2.12.2000 and 22.12.2000, the learned counsel either did not avail of the opportunity or did

not make any arrangements for the petitioner's case being represented before the Court though adjournments were granted on the previous occasions with a clear indication that if it was not possible for the counsel to appear on the next date, alternative arrangements shall be made on behalf of the petitioner. In fact, it was noted on 22.12.2000 while closing the arguments and reserving the matter for judgment, that the matter was listed in the final hearing board a number of times since 28.4.2000 (in fact, the matter was listed for as many as 27 items.)

To give last opportunity, the matter was notified for dictating the judgment in the Court today.

Today also, a sick note is filed. The Court proceeds to dictate the judgment as the arguments were already closed earlier and the Court has waited for a sufficiently long period.

4. The thrust of the contentions raised in the petition is that since the workmen were employed by the Prabha Mills Ltd. and their services were never terminated in accordance with law, they continue to be employees of Prabha Mills Ltd. even on the appointed day i.e. 1.4.1974 and, therefore, they were entitled to get the benefit of the provisions of sub-section (1) of Section 14 of the Act.

5. On the other hand, Ms Vaibhavi D Nanavati, learned counsel for the respondents submitted that admittedly the Prabha Mills Ltd. had ceased to function since 1968 and the workmen concerned were not required to render any services. It was submitted that as far as the Viramgam Textile Mills Ltd. as a unit of National Textile Corporation Gujarat Ltd. is concerned, the workmen who where working with the Prabha Mills Ltd. till 1968 and who were not employed in the Prabha Mills Ltd. immediately before 1.4.1974 were not entitled to get any benefit of services rendered to Prabha Mills Ltd. prior to closure in 1968. It was submitted that since such workmen were appointed by the Viramgam Textile Mills as a unit of the National Textile Corporation after 1.4.1974, they were not entitled to get any continuity of service for the period prior to 1.4.1974 more particularly when they had got the benefits for the services rendered prior to 1.4.1974 under the order dated 22.3.1979 of the Assistant Commissioner of Payments in the matter of claims under Section 20 of the Nationalization Act.

The learned counsel for the respondent further

stated that at present the respondent Company is before the BIFR under the SICA Act, 1985.

6. Before dealing with the rival submissions, it is necessary to set out the relevant provisions of the Act. The preamble of the Act reads as under :-

"An Act to provide for the acquisition and transfer of the sick textile undertakings, and the right, title and interest of the owners in respect of the sick textile undertakings, specified in the First Schedule with a view to re-organising and rehabilitating such sick textile undertakings so as to subserve the interests of the general public by the augmentation of the production and distribution, at fair prices, of different varieties of cloth and yarn, and for matters connected therewith or incidental thereto."

Section 2(a) defines `appointed day' as the 1st day of April, 1974. Section 2(h) defines `owner' as under :-

"(h) `owner' when used in relation to a sick textile undertaking, means any person or firm who or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the sick textile undertaking or any part thereof, and in the case of a textile company which is being wound up or the business whereof is being carried on by a liquidator or receiver, includes such liquidator or receiver, and also includes any agent or manager or such owner but does not include any person or body of persons authorized under the Industrial (Development and Regulation) Act, 1951, or the Sick Textile Undertakings (Taking Over of Management) Act, 1972, to take over the management of the whole or any part of the sick textile undertaking."

Section 3 provided for acquisition of rights of owners in respect of sick textile undertakings in the following terms :-

"3. Acquisition of rights of owners in respect of sick textile undertakings.- (1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in

relation to every such sick textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Every sick textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation."

Section 4 provided general effect of vesting. The relevant portion of Section 5 reads as under :-

"5. Owner to be liable for certain prior liabilities.- (1) Every liability, other than the liability specified in sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

(2) Any liability arising in respect of -

(a) & (b) ... ...

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government

shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that, -

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2),

in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any Courts tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation;

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation."

Section 14 reads as under :-

"14. Employment of certain employees to continue.- (1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, employed in a sick textile undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in, the National Textile Corporation and shall continue to do so unless and until his employment in the National textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

(2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947, and who had been immediately before the appointed day

employed in a sick textile undertaking shall, in so far as such person is employed in connection with the sick textile undertaking which has vested in the National Textile Corporation, become, as from the appointed day, an employee of the National Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it has not vested in the National Textile Corporation and shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

Provided that in respect of any sick textile undertaking the management of which could not be taken over by the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 by reason of any decree, order or injunction of any Court, any agent, director (including managing or whole-time director, by whatever name called) or manager shall not become an employee of the National Textile Corporation.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force the transfer of the services of any officer or other person employed in a sick textile undertaking to the National Textile Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority.

(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the national Textile Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any lease not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the extent

such liability has been taken over by the Central Government under section 5 enforce his claim against the owner of the sick textile undertaking but not against the Central Government or the National Textile Corporation."

Chapter VI of the Act provided for appointment of Commissioners of Payments, the manner in which the claims were to be lodged, examined and decided and moneys due were to be disbursed.

7. A perusal of the aforesaid provisions of the Act clearly indicates that for the period prior to 1.4.1974 every liability in respect of wages, salaries and other dues of the employees of the textile undertaking for the prior prior to 1.4.1974 could not be enforced against the Central Government or the National Textile Corporation in which the ownership of the undertaking had vested with effect from 1.4.1974. For the period prior to 1.4.1974, the liability could be enforced only against the owner of the undertaking for the relevant period.

8. The contention raised in the petition, however, is that since the concerned workmen were employed by Prabha Mills Ltd. prior to 1968, closure of the mill did not result into termination of their employment in 1968 or when the mill came to be nationalized with effect from 31.3.1974 and that in this view of the matter, they continued to be the workmen of the mill and, therefore, entitled to claim the benefit of sub-section (1) of Section 14 of the Act.

The defence of the respondent Company is that what Section 14 contemplated was that only those workmen/employees who were actually employed in a sick textile undertaking immediately before 1.4.1974 were entitled to get the benefit of continuity of service for the period prior to 1.4.1974 and that the expression "every person, who is a workman and has been immediately before the appointed day employed in a sick textile undertaking" did not include within its sweep the workmen who were appointed by the Prabha Mills Ltd. prior to 1966 but were not on the muster roll of the undertaking as on 31.3.1974.

9. There appears to be considerable substance in the submission made by Ms Vaibhavi D. Nanavati, learned counsel for the respondent, because the scheme of the Act is that for the period prior to 31.3.1974 the workmen

were to make whatever claims they had only against the previous owner and not against the Central Government or the National Textile Corporation. The provisions of Section 5 clearly indicate the above scheme and that is why Chapter VI makes detailed provisions for appointment of Commissioners for payments, lodging of claims, priority of claims including claims of workmen, examination of claims and decisions on such claims and disbursement of money by the Commissioner of Payments. If at all the intention of the Parliament was to confer the benefit of continuity of services on all such workmen who were previously employed in a sick textile undertaking and which textile undertaking had remained closed for a number of years like 4 to 6 years in the instant case, the Parliament would not have used the expression "every person who is a workman and has been immediately before the appointed day (1.4.1974)". It may be that if the old management had not terminated their services in accordance with law, the workmen may make claim against the previous owner of the textile undertaking and for dealing with such claims, Chapter VI of the Act contained detailed provisions. The second schedule to the Nationalization Act contains the priorities of the claims including arrears for pre-take-over management period and post-take-over management period. For the pre-take-over management period, arrears in relation to provident fund, salaries and wages and other amounts due to an employee are given priority over other dues for the pre-take-over management period though they rank below the dues for the post-take-over management period.

10. Moreover, there is no denial to the averment made in the reply affidavit dated 28.4.2000 (para 5.9) that the Assistant Commissioner of Payments had passed order dated 22.3.1979 in the matter of claims filed under Section 20 of the Nationalization Act and that the workmen had secured the benefit for the services with the previous mill prior to 1.4.1974. In fact, this contention was also raised in the written statement dated 21.1.1977 filed before the Industrial Court.

11. In view of the above discussion, the Court finds no merit in this petition. The petition is accordingly dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)

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